and the law of the exclusionary rule has developed considerably since that decision. Since *Sabbath* is simply an application of *Miller*, these decisions do not govern the present case. Instead, it is necessary to weigh the costs and benefits of exclusion before deciding whether to apply the exclusionary rule in knock and announce violations.

The balance of interests does not justify extending the exclusionary rule to knock and announce violations. Since there is no legitimate causal connection between a knock and announce violation and the discovery of evidence, the exclusionary rule's deterrent is compromised. Applying the exclusionary rule to knock and announce violations would place the police in a worse position than if the violation had never occurred, which is contrary to the rationale of the inevitable discovery exception to the exclusionary rule.

The only possible causal connection between a knock and announce violation and discovering evidence is if the violation prevents the destruction of the evidence, which is not a legitimate reason for distinguishing the inevitable discovery exception. The exclusionary rule is also unnecessary to induce officers into complying with the Fourth Amendment, since officer safety is a powerful incentive for police to follow the knock and announce rule. Therefore, there is no reason to invoke the compromised deterrent of the exclusionary rule.

ARGUMENT

I. The exclusionary rule should not be extended "by even a fraction of an inch."

This case centers on the eternally controversial Fourth Amendment exclusionary rule. In spite of over a half century of debate, see 1 W. LaFave, Search and Seizure § 1.2(a), p. 27, and n. 1 (4th ed. 2004), fundamental questions about the rule remain unanswered. While the primary rationale for the exclusionary rule is deterring Fourth Amendment violations,

see *Stone* v. *Powell*, 428 U. S. 465, 486 (1976), its value as a deterrent is at best unproven. Empirical studies on the exclusionary rule's deterrence are typically flawed. See *United States* v. *Janis*, 428 U. S. 433, 449-450, and n. 22 (1976). Given the numerous practical difficulties with making a good empirical assessment of the rule's deterrence, see *id.*, at 450-453, proving that the exclusionary rule actually does deter police misconduct may be impossible. See Slobogin, Why Liberals Should Chuck the Exclusionary Rule, 1999 Ill. L. Rev. 363, 368-371; Canon, Ideology and Reality in the Debate Over the Exclusionary Rule: A Conservative Argument for Its Retention, 23 So. Tex. L. J. 559, 560 (1982); Morris, The Exclusionary Rule, Deterrence and Posner's Economic Analysis of the Law, 57 Wash. L. Rev. 647, 653 (1982).

Although unproven and probably unprovable, the exclusionary rule still looms over the criminal justice system. While "significantly limited" by this Court's decisions, see *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 364, n. 4 (1998), the main thrust of the exclusionary rule still operates in countless cases to suppress the fruits of illegal searches or seizures from being used as evidence of guilt. This gives *Mapp* v. *Ohio*, 367 U. S. 643 (1961) and its progeny an extraordinary influence over the criminal justice system, being a potential issue in almost every criminal case.

While the rule remains pervasive but unproven, its costs are not ephemeral. The heavy cost and potential unfairness of the exclusionary rule was well known even before *Mapp* extended that rule to the states. As Justice Cardozo famously put it, "The criminal is to go free because the constable has blundered." *People* v. *Defore*, 242 N. Y. 13, 21, 150 N. E. 585, 587 (1926). Dean Wigmore had similar sentiments:

> " 'Titus, you have been found guilty of conducting a lottery; Flavius, you have confessedly violated the Constitution. Titus ought to suffer imprisonment for crime, and Flavius for contempt. But no! We shall let you *both* go free. We shall not punish Flavius directly, but shall do so

> by reversing Titus' conviction. This is our way of teaching people like Flavius to behave, and of teaching people like Titus to behave and incidentally of securing respect for the Constitution. Our way of upholding the Constitution is not to strike at the man who breaks it, but to let off somebody else who broke something else.'
>
> "Some day, no doubt, we shall emerge from this quaint method of enforcing the law. At present, we see it in many quarters. It will be abandoned only as the judiciary rises into a more appropriate conception of its powers and a less mechanical idea of justice." 8 J. Wigmore, Evidence § 2184a, p. 31, n. 1 (McNaughton rev. 1961) (quoting 8 J. Wigmore, Evidence § 2184 (3d ed. 1940) (emphasis in original)).

Searches and seizures produce physical evidence, which is "typically reliable and often the most probative information bearing on the guilt or innocence of the defendant." *Stone*, 428 U. S., at 490. Since there is little, if any, connection between the legality of the search and the reliability of the seized evidence, see *ibid.*, the exclusionary rule deprives the criminal justice system of reliable evidence, requiring the prosecution to use less reliable evidence or to forgo prosecution entirely. Cf. *United States* v. *Patane*, 542 U. S. 630, 124 S. Ct. 2620, 2631,159 L. Ed. 2d 667, 680 (2005) (Kennedy, J., concurring) (noting "important probative value of reliable physical evidence"). This makes the exclusionary rule a very costly remedy to society.

"There is no gainsaying that arriving at the truth is a fundamental goal of our legal system." *United States* v. *Havens*, 446 U. S. 620, 626 (1980). By depriving the criminal justice system of one of the most effective means of achieving this fundamental interest, the exclusionary rule places a substantial cost on society. See *Janis*, 428 U. S., at 448-449; see also *Stone*, 428 U. S., at 489-490. "Because the exclusionary rule precludes consideration of reliable, probative evidence, it imposes significant costs: It undeniably detracts from the

truthfinding process and allows many who would otherwise be incarcerated to escape the consequences of their actions." *Scott*, 524 U. S. at 364. It is no surprise that some recent research shows that the rule played a role in the increase in crime following *Mapp*. See Atkins & Rubin, Effects of Criminal Procedure on Crime Rates: Mapping Out Effects of the Exclusionary Rule, 46 J. Law & Econ. 157, 173-174 (2003). One "conservative estimate" places the cost at about "10,000 felons and 55,000 misdemeanants who evade punishment each year because of successful Fourth Amendment suppression motions." Slobogan, *supra*, at 443, and n. 359; see also *United States v. Leon*, 468 U. S. 897, 998, n. 6 (1984).

Another dimension to the exclusionary rule's cost is that the rule does not take into account the actual damage to the privacy of the victim of the illegal search or seizure. As this Court has made clear, the exclusionary rule is not justified by any sense of redress to the victim of the police illegality. See *United States* v. *Calandra*, 414 U. S. 338, 347 (1974). A remedy that is not matched to the actual cost of the harm is an invitation to unfairness and skews the incentives that are supposed to be the justification for the rule.

The exclusionary rule is often a gift to the criminal defendant fortunate enough to win the Fourth Amendment lottery. A major shortcoming of the rule is that its exercise does not depend upon the degree of intrusion upon constitutionally protected privacy interests. A minor violation of *Terry* v. *Ohio*, 392 U. S. 1 (1968) creates as strong of a case for suppression as a suspicionless, warrantless, night-time invasion of a house. Nor does the rule's use turn on the importance of what is being suppressed. A shoplifted bottle of water and a murder victim's body are equally suppressible. At the same time, some of the worst violations of privacy, like intentional police harassment, are beyond the rule's deterrent. See Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. 757, 795-798 (1994); Posner, Rethinking the Fourth Amendment, 1981 S. Ct. Rev. 49, 54 (1982). "Freeing either a tiger or a mouse in a school-

room is an illegal act, but no rational person would suggest that these two acts be punished in the same way." *Bivens* v. *Six Unknown Narcotics Agents*, 403 U. S. 388, 419 (1971) (Burger, C.J., dissenting). Yet the exclusionary rule treats all violations equally without regard to the actual harm inflicted by the search, or what was gained by the search. "The disparity in some cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice." *Stone*, 428 U. S., at 490.

While the exclusionary rule is justified as a necessary defense of the Fourth Amendment, it is not a part of the Fourth Amendment's guarantee. Unlike the Fifth Amendment self-incrimination privilege, there is no textual authorization for a Fourth Amendment exclusionary rule. See *Coolidge* v. *New Hampshire*, 403 U. S. 443, 496 (1971) (Black, J., concurring and dissenting); cf. *Patane*, 124 S. Ct., at 2628, 159 L. Ed. 2d, at 677 (plurality opn.). Nor can support for the Fourth Amendment exclusionary rule be found in constitutional history. The exclusionary rule cannot be justified by an appeal to the intent of the framers of the Fourth Amendment or common law remedies for illegal government searches. See Amar, 107 Harv. L. Rev. 757, 785-787; Posner, 1981 S. Ct. Rev., at 51-52. It is not a part of the Fourth Amendment. See *Scott*, 524 U. S., at 362; *Leon*, 468 U. S., at 906. It is a judicially created constitutional policy that lives or dies on the grounds for its justification. See *Arizona* v. *Evans*, 514 U. S. 1, 10-11 (1995).

Disproportionality is not just a minor flaw. Rather, it is a feature of the exclusionary rule. One contention on behalf of the rule is that the victims of illegal searches will often lack the incentives and resources to bring an action for damages. Amsterdam, Perspective on the Fourth Amendment, 58 Minn. L. Rev. 349, 430 (1974). While a comparatively small invasion of privacy will not support a sufficient level of damages to justify civil litigation, the exclusionary rule

provides both the incentive and the forum to vindicate these rights.

This highlights another problem with the exclusionary rule. Even if the exclusionary rule does deter, it does so in a socially inefficient manner. Since the exclusionary rule is simply a constitutional policy, it must deter efficiently if it is to be allowed to deter at all.

Ideally, the Fourth Amendment should be enforced through an optimum deterrent, one where the penalty for the offense is equal to the cost to society of the improper conduct. See Posner, 1981 S. Ct. Rev., at 54-55. The legitimate costs to be protected by the exclusionary rule are the privacy and property interests protected by the Fourth Amendment. See *id.*, at 50-51. The criminal's interest in avoiding punishment, while the motivation for the suppression motions that give the exclusionary rule its force, is not a legitimate interest for the rule to vindicate. See *id.*, at 51-52. The exclusionary rule's lack of proportionality means that there will be many situations in which a minimal privacy value will be enforced through the socially costly suppression of evidence.

Too much deterrence is no better for society than too little. Since people cannot predict the legal outcome of their actions with absolute precision, excessive deterrence "will lead people to forgo socially valuable activities near the uncertain boundary." *Id.*, at 55. By overpunishing relatively trivial infringements upon privacy, the Fourth Amendment exclusionary rule overdeters. The rule "is not merely crude; to the extent obeyed, it systematically overdeters, because it imposes social costs that are greatly disproportionate to the actual harm to lawful interests from unreasonable searches and seizures." *Id.*, at 56.

Tort law would seem to be a more appropriate remedy for Fourth Amendment violations. It is a natural avenue for redressing wrongs, and readily accommodates the invasions of privacy that would make up a standard Fourth Amendment civil action. See *id.*, at 53-54. It is also the method of enforce-

ment intended by the framers of the Fourth Amendment. See Amar, 107 Harv. L. Rev., at 786. Unlike the exclusionary rule, the tort remedy can be adjusted to fit the level of intrusion on Fourth Amendment interests, yielding a more optimum deterrent. See Posner, 1981 S. Ct. Rev., at 54. Unfortunately, two factors prevent substituting tort law for the exclusionary rule at this time. The first is the substantial web of civil immunities surrounding government action that have developed over the years. See *id.*, at 64-68. While it could be possible for a state to deal with this problem and design an effective tort alternative to the exclusionary rule, a second problem prevents this.

Since *Mapp* was in part based upon the inadequacy of other remedies, it is understandable that the states and the federal government do not want to risk an alternative remedy. While this Court invited alternative approaches in *Miranda* v. *Arizona*, 384 U. S. 436, 467 (1966), a majority of this Court has not yet encouraged alternatives to the exclusionary rule. The fact that the most prominent opinion advocating alternative remedies is a dissent, see *Bivens*, 403 U. S., at 411-426 (Burger, C.J., dissenting), is telling. A state that went to the expense of establishing an alternative civil remedy has no reason to believe that it could then dispense with the exclusionary rule. *Mapp*'s uneasy compromise deters the innovation that could enforce the Fourth Amendment at much less cost to society than the exclusionary rule, effectively preempting the field of any alternatives.

The exclusionary rule is little more than a "lesser evil" approach to the Fourth Amendment. The defenses of the rule resonate with the claim that some method for enforcing the Fourth Amendment must be found or the right will be a dead letter. See *Mapp*, 367 U. S., at 660 ("we can no longer permit that [Fourth Amendment] right to remain an empty promise"); see also *Terry*, 392 U. S., at 12. The exclusionary rule has won the contest to defend the Fourth Amendment more by default than on its merits as a fair and efficient remedy.

The notion that we need the exclusionary rule because nothing else works is a poor justification for such an important constitutional policy. See Kaplan, The Limits of the Exclusionary Rule, 26 Stan. L. Rev. 1027, 1032 (1974). It may also be the best available argument for the rule. The deterrent rationale is unproven and unprovable, the costs of exclusion are substantial, and the rule will work genuine unfairness in many cases. Inertia and a lack of available alternatives may be the best explanations for the exclusionary rule's continued survival.

Even this weak rationale for the rule may diminish. It is now easier for victims of illegal searches and seizures to seek damages in the courts than it was when *Mapp* was decided. Federal law now allows for the recovery of attorneys fees for a successful plaintiff in a civil rights action. See 42 U. S. C. § 1988. The tort and civil rights bars have developed considerably since *Mapp*. There are now more alternatives to curb abusive police conduct than existed when *Mapp* was decided. See *Dickerson* v. *United States*, 530 U. S. 428, 442 (2000) (more remedies than when *Miranda* was decided, three years later). If this Court were to encourage alternatives, the states might feel more free to use these new tools to fashion a superior alternative.

A further problem with the exclusionary rule is that it disproportionately grants more benefits to criminals than to the innocent. See Posner, 1981 S. Ct. Rev., at 54; Amar, 107 Harv. L. Rev., at 795-796. By relying on suppression motion to enforce the Fourth Amendment, the exclusionary rule elevates the accused criminal into "a kind of private attorney general." Amar, *supra*, 796.

> "But the worst kind. He is self-selected and self-serving. He is often unrepresentative of the larger class of law-abiding citizens, and his interests regularly conflict with theirs. Indeed, he is often despised by the public, the class he implicitly is supposed to represent. He will litigate on the worst set of facts, heedless that the result will be a bad precedent for the Fourth Amendment generally. He

> cares only about the case at hand — his case — and has no long view. He is not a sophisticated repeat player. He rarely hires the best lawyer. He cares only about exclusion — and can get only exclusion — even if other remedies (damages or injunctions) would better prevent future violations. He is, in many ways, the exact opposite of the litigants the NAACP sought out in its carefully orchestrated campaign to revive the Equal Protection Clause in the 1930s through the 1960s. He is, in short, an awkward champion of the Fourth Amendment." *Ibid.*

While the innocent may receive some secondary benefit if the exclusionary rule actually deters illegal searches of innocent civilians, the fact remains that criminals are the primary beneficiaries of the rule. The proponents of the rule cannot ignore the fact that under the exclusionary rule "the more guilty you are the more you benefit." *Id.*, at 797. The rule creates a Fourth Amendment enforced by an "overcompensated" private attorney general, see *id.*, at 796, which can only lead to the distortion of search and seizure law.

This Court recognizes that the exclusionary rule is a costly sanction that should be employed only in "certain circumstances." *Scott*, 524 U. S., at 364. It is an "extreme sanction," *Leon*, 468 U. S., at 916, that should only be used when truly necessary. "We have previously cautioned against expanding 'currently applicable exclusionary rules by erecting additional barriers to placing truthful evidence before state juries . . . .' " *Colorado* v. *Connelly*, 479 U. S. 157, 166 (1986) (quoting *Lego* v. *Twomey*, 404 U. S. 477, 488-489 (1972)). "[T]he central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence." *Delaware* v. *Van Arsdall*, 475 U. S. 673, 681 (1986). The exclusionary rule is a direct assault on this vital societal interest. It may be the only alternative for now, but the exclusionary rule should only be employed when absolutely necessary to protect the Fourth Amendment through its unproven deterrent.

It has been over 40 years since *Mapp*. It is highly unlikely that there is any remaining aspect of search and seizure law so fundamental that it will require an expansion of the exclusionary rule. The exclusionary rule should not be extended to cover the knock and announce rule, even if that required only a fractional extension of *Mapp*. Cf. *Silverman* v. *United States*, 365 U. S. 505, 512 (1961) ("but we decline to go beyond it, by even a fraction of an inch").

II. Whether the exclusionary rule applies to knock and announce violations remains an open question.

The decision incorporating the knock and announce rule into the Fourth Amendment explicitly declined to address whether the independent source doctrine and the inevitable discovery rule precluded the use of the exclusionary rule in knock and announce cases. See *Wilson* v. *Arkansas*, 514 U. S. 927, 937, n. 4 (1995). Petitioner attempts to preempt this issue by invoking a pair of cases decided long before *Wilson*. See Petitioner's Brief 9-12. While this Court did suppress evidence because of violations of the federal statutory knock and announce rule in *Miller* v. *United States*, 357 U. S. 301 (1958), and *Sabbath* v. *United States*, 391 U. S. 585 (1968), these cases do not govern the exclusionary rule's application to the Fourth Amendment knock and announce rule. Those cases come from an era when the knock and announce rule had a much smaller impact on the criminal justice system than it has now, and when the understanding of the exclusionary rule was far from fully developed. While *Miller* and *Sabbath* could be relevant to a knock and announce rule that only applied to the federal government, they are irrelevant to the Fourth Amendment regime at issue in the present case.

In *Miller*, federal agents arrested Miller at his apartment. See 357 U. S., at 302. One of the agents knocked on Miller's door and was met with a " 'Who's there,' " to which the agent responded, " 'Police.' " *Id.*, at 303. Miller then went to the

door, with the chain attached, and asked the officers what they were doing there. Before the agents could reply, Miller closed the door. The agents " put our hands inside the door and pulled and ripped the chain off, and entered.' " *Id.*, at 303-304. Miller and his codefendant were then arrested, and marked money used in an earlier drug transaction was found in the apartment. *Id.*, at 304. "The officers had no arrest or search warrant." *Ibid.*

Although the federal statutory knock and announce rule only regulated the execution of search warrants, the government conceded that the rule also applied to warrantless arrests under rules developed judicially by the D.C. Circuit. See *id.*, at 306. After examining the common law history of the knock and announce rule, see *id.*, at 306-309, the *Miller* Court concluded that the federal officers did not comply with the rule because they did not state their purpose before entering. See *id.*, at 313-314. This made the resulting arrest unlawful, and without further discussion the Court held, "the evidence seized should have been suppressed." *Id.*, at 314.

In *Miller*, the application of the exclusionary rule to knock and announce violations was not central to the decision. In the opinion, it was merely presented as a given and was not contested by the dissent. The petitioner argued that his arrest was illegal. See Brief for Petitioner in *Miller* v. *United States* (October Term 1957, No. 126), pp. 14-15. The knock and announce violation was given as one reason for the arrest's illegality. See *id.*, at 15-16. The argument that illegality of the arrest requires exclusion is cursory, see *id.*, at 28-29, and it contains no discussion of a causal connection between the illegality and obtaining the evidence. The United States did not even address the exclusionary rule, as it simply argued that the arrest and resulting search was legal. See Brief for United States in *Miller* v. *United States* (October Term 1957, No. 126), pp. ii, 8-13, 27-29.

The lack of discussion on the role of the exclusionary rule highlights a key difference between *Miller* and the present case.

This Court has been more willing to impose the exclusionary rule on the federal government than on the states. For example, this Court waited 47 years between the decision to impose the Fourth Amendment exclusionary rule on the federal government, see *Weeks* v. *United States*, 232 U. S. 383 (1914) and deciding to do the same to the states. See *Mapp* v. *Ohio*, 367 U. S. 643 (1961). Another example is this Court's willingness to apply the exclusionary rule for violations of the Federal Rules of Criminal Procedure. In *Mallory* v. *United States*, 354 U. S. 449, 453, 455-456 (1957), this Court suppressed a confession because of the failure to comply with Rule 5(a)'s requirement for prompt arraignment after arrest. *Mallory*, along with *McNabb* v. *United States*, 318 U. S. 332 (1943), was an exercise of this Court's supervisory power. See *United States* v. *Alvarez-Sanchez*, 511 U. S. 350, 354 (1994). This Court has also invoked its supervisory power to enjoin federal agents from turning evidence seized in violation of Rule 41(c) over to state officials. See *Rea* v. *United States*, 350 U. S. 214, 216-217 (1956).

While the use of supervisory power to exclude evidence must be used with restraint, see *United States* v. *Payner*, 447 U. S. 727, 734-735 (1980); *Lopez* v. *United States*, 373 U. S. 427, 440 (1963), this Court will apply the exclusionary rule to the federal government for lesser wrongs than a violation of the Constitution. Since *Miller* only applied to the federal government, it had far less effect on the criminal justice system than would a decision applying the exclusionary rule to knock and announce today. The enforcement of the criminal law is primarily a function of the states. See *Payne* v. *Tennessee*, 501 U. S. 808, 824 (1991). Applying a federal criminal rule to the states through the Constitution vastly expands that rule's influence and importance. The *Miller* Court's automatic application of the exclusionary rule does not decide the much more important question before the Court today.

Miller was decided before many significant developments in the law of the exclusionary rule. It was part of a bygone era

of jurisprudence much more supportive of the exclusionary rule than modern case law. In addition to its deterrent effect, exclusion was also justified on the ground that the courts should not be accomplices to government illegality. See *Elkins* v. *United States*, 364 U. S. 206, 222-223 (1960); *McNabb*, 318 U. S. 345. This has been all but rejected, as deterrence is now the " 'prime purpose' of the rule, if not the sole one . . . ." *United States* v. *Janis*, 428 U. S. 433, 446 (1976) (quoting *United States* v. *Calandra*, 414 U. S. 338, 347 (1974)). The exclusionary rule was also once seen as an "essential part" of the Fourth Amendment. *Mapp* v. *Ohio*, 367 U. S. 643, 657 (1961). Also, some supported the exclusionary rule through a combination of the Fourth and Fifth Amendments. See *id.*, at 661-663 (Black, J., concurring); *Agnello* v. *United States*, 269 U. S. 20, 33-34 (1925). These arguments are no longer valid. See *United States* v. *Leon*, 468 U. S. 897, 906 (1984).

Many exceptions to the rule were developed after *Miller*. While the independent source doctrine has a long pedigree, see *Segura* v. *United States*, 468 U. S. 796, 805 (1984), the other decisions limiting the exclusionary rule came after *Miller* and *Sabbath* were decided. See, *e.g.*, *Calandra*, *supra*; *Janis*, *supra*; *Rakas* v. *Illinois*, 439 U. S. 128 (1978) (standing); *Stone* v. *Powell*, 428 U. S. 465 (1976) (relitigation on habeas); *United States* v. *Leon*, 468 U. S. 897 (1984) (good-faith reliance on warrant).[2]

Sabbath adds nothing new to the exclusionary rule analysis. Like *Miller*, the case turned on whether the police violated knock and announce procedure under 18 U. S. C. § 3109. See *Sabbath*, 391 U. S., at 588. The *Sabbath* Court noted *Miller*'s "extensive analysis" of the common law knock and announce rule, see *id.*, at 589, and like *Miller*, summarily ordered the exclusion of evidence because of a knock and announce

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2. The inevitable discovery rule is "closely related" to the independent source doctrine, but it is still a separate rule, see *Nix* v. *Williams*, 467 U. S. 431, 443 (1984), that was formulated after *Miller* and *Sabbath*.

violation. See *id.*, at 586, 591. This simple application of *Miller*, decided before knock and announce was incorporated into the Fourth Amendment, and before this Court's further development of the exclusionary rule, has little bearing on the present case.

Hudson's reliance on *Miller* and *Sabbath* is part of a larger argument. He contends that since a knock and announce violation makes the search or arrest illegal, the exclusionary rule must apply. See Pet. Brief at 15. Besides the substantial conflict between this contention and the independent source and inevitable discovery doctrines, the argument also overstates the relationship between a Fourth Amendment violation and the exclusionary rule. The exclusionary rule is not a "necessary corollary" to the Fourth Amendment. See *Leon*, 468 U. S., at 905-906. The question of whether to impose the exclusionary sanction is "an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Illinois* v. *Gates*, 462 U. S. 213, 223 (1983). This issue is resolved weighing the costs and benefits of excluding the evidence in that case, see *Leon*, *supra*, at 906-907, which never occurred in *Miller* and *Sabbath*. A careful weighing of the costs and benefits of exclusion in this case shows that the exclusionary rule should not apply to knock and announce violations.

III. The exclusionary rule should not be extended to cover knock and announce violations.

The balancing of interests necessary to determine whether to apply the exclusionary rule, see *United States* v. *Leon*, 468 U. S. 897, 906-907 (1984), should be made in the context of the general balance of interests behind the rule. When applied to the standard situation like the use of the fruits of a warrantless search without probable cause, or a *Terry* v. *Ohio*, 392 U. S. 1 (1968) violation, as evidence of guilt, the exclusionary rule is just barely acceptable. Although it contains genuine

costs and uncertain benefits, the rule can still be justified, although just barely. See Part I, *supra*. The "drastic measure," *United States* v. *Janis*, 428 U. S. 433, 459 (1976), of excluding evidence because of a Fourth Amendment violation should not be employed if there is any genuine increase in costs or decrease in benefits relative to the balance struck in *Mapp* v. *Ohio*, 367 U. S. 643 (1961). For example, good faith reliance on a warrant, see *Leon*, *supra*, at 922, or use of the evidence at a deportation hearing, see *INS* v. *Lopez-Mendoza*, 468 U. S. 1032, 1409 (1984), justify exceptions to the exclusionary rule. The "normal" application of the exclusionary rule is balanced on a knife's edge. Any substantial push means that the rule should not apply.

The exclusionary rule is not applied mechanically to every Fourth Amendment violation. Those asking to use this extraordinary sanction should bear a heavy burden of justification. "Although we have held that these costs [of excluding evidence] to be worth bearing in certain circumstances, our cases have repeatedly emphasized that the rule's 'costly toll,' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging application of the rule." *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 364-365 (1998) (footnote omitted) (quoting *United States* v. *Payner*, 447 U. S. 727, 734 (1980)).

A knock and announce violation lacks the characteristics that justify exclusion. The exclusionary rule's deterrent operates to remove "inducements to unreasonable invasions of privacy . . . ." *Leon*, 468 U. S., at 900. If there is no causal connection between the police illegality and the evidence, then the exclusionary rule should not apply. The knock and announce rule presents this lack of cause and effect, which is a sufficient reason to decline to impose the exclusionary sanction.

The inevitable discovery rule and the independent source doctrine demonstrate this limit to the exclusionary rule. Under the independent source doctrine, a prior illegal search does not

require suppressing evidence "if police had an 'independent source' for discovery of the evidence." *Segura* v. *United States*, 468 U. S. 796, 805 (1984). This rule starts with the decision in *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920). See *Segura, supra*, at 799. *Silverthorne* held that the government could not use information from papers found through an illegal search as the basis for a subpoena of books and records held by the victim of that search. See 251 U. S., at 391-392. In dismissing the government's contention that it could use the information, Justice Holmes noted, "The government now, while in form repudiating and condemning the illegal seizure, seeks to avail itself of the knowledge obtained by that means which otherwise it would not have had." *Id.*, at 391. This highlights the cause-effect relationship that is central to the exclusionary rule's deterrent.

The exclusionary rule is premised on the government getting the evidence through illegal means. The independent source doctrine addresses what happens when there is a break in the chain between the government's illegality and the evidence. "If knowledge of [the facts] is gained from an independent source they may be proved like any others, but the knowledge gained by the government from its wrong cannot be used by it in the way proposed." *Id.*, at 392. If the causal relationship between the illegality and the relevant evidence is broken, the exclusionary rule's deterrence is compromised, and there is less reason for exclusion.

This principle was taken to its logical conclusion in the inevitable discovery case, *Nix* v. *Williams*, 467 U. S. 431 (1984). *Nix* held that the exclusionary rule did not apply to suppress the body of a murder victim that was found through illegal questioning, because the discovery of the body was inevitable even if the illegal questioning had never taken place. See *id.*, at 449-450. This was derived from the independent source rule of *Silverthorne* and *Wong Sun* v. *United States*, 371 U. S. 471 (1963). See 467 U. S., at 442. Although this was not a Fourth Amendment case, the same exclusionary rule princi-

ples applied. See *id.*, at 442, 446. "The core rationale consistently advanced by this Court for extending the exclusionary rule to evidence that is the fruit of unlawful police conduct has been that this admittedly drastic and socially costly course is needed to deter police from violations of constitutional and statutory protections." *Id.*, at 442-443. *Nix* began by analyzing the "fruit of the poisonous tree" doctrine. The purpose behind this rule is to deter police misconduct by making sure that "the prosecution is not to be put in a better position than it would have been in if no illegality had transpired." *Id.*, at 443. The Court took this principle to the next logical step and developed the rationale for inevitable discovery doctrine. "By contrast, the derivative evidence analysis ensures that the prosecution is not put in a *worse* position simply because of some earlier police error or misconduct." *Ibid.* (emphasis in original).

Two reasons support this corollary to the independent source doctrine. First, the extra harm caused by the loss of evidence that would have been found tips the balance of interests against exclusion. Second, applying the exclusionary rule in this situation would lead to overdeterrence. The law of search and seizure is complex, which creates problems for the exclusionary rule's deterrent. See Oaks, Studying the Exclusionary Rule in Search and Seizure, 37 U. Chi. L. Rev. 665, 731 (1970); see also Wright, Must the Criminal Go Free If the Constable Blunders?, 50 Tex. L. Rev. 736, 740-741 (1972). Police cannot be expected to know with certainty the Fourth Amendment consequences of every search and seizure. "We have frequently observed, and our many cases on the point amply demonstrate, the difficulty of determining whether particular searches or seizures comport with the Fourth Amendment." *Anderson* v. *Creighton*, 483 U. S. 635, 644 (1987). The possible illegality of the search or seizure must be a part of every officer's calculations. If the exclusionary rule can put law enforcement in a worse position than if the activity never happened, then officers will be deterred from doing legal activities. The very costly exclusionary rule must deter accurately if it is to be imposed. See *supra*, at 9. It should not

not apply where it threatens to deter legal conduct in the pursuit of law enforcement.

These principles apply with equal force to the knock and announce rule. There is no legitimate connection between the knock and announce violation and the discovery of evidence. The knock and announce rule is only relevant when police are conducting an otherwise valid search or effecting a lawful arrest.[3] If the suspect would not have destroyed the evidence after a knock and announce, then the situation is the same as the inevitable discovery rule. Since the police would have found the evidence without the violation, applying the exclusionary rule would put the police in a worse position than if the violation had never occurred. As there is no practical difference between *Nix* and this situation, the exclusionary rule would not apply.

Although the same cannot be said if the suspect were to destroy the evidence after a knock and announce, the analysis does not change. While the exclusionary rule seeks to deter police illegality, it cannot be used to encourage or reward criminal behavior. One reason that the exclusionary rule does not apply to deportation proceedings is that applying the rule would force courts to shut their eyes to an ongoing crime. "The constable's blunder may allow the criminal to go free, but we have never suggested that it allows the criminal to continue in the commission of an ongoing crime." See *INS* v. *Lopez-Mendoza*, 468 U. S. 1032, 1047 (1984). Similarly, the exclusionary rule does not prevent the use of illegally obtained evidence to impeach the defendant, because the exclusionary rule cannot act as a shield that allows perjury to go unchallenged. See *United States* v. *Havens*, 446 U. S. 620, 626-627 (1980). Destroying property in anticipation of a lawful seizure is a crime. See 18 U. S. C. § 2232(a). The courts cannot shut their eyes to this criminal activity when deciding whether to

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3. If the search or seizure violates the Fourth Amendment for some other reason, then knock and announce is unnecessary for suppression.

apply the exclusionary rule. Also, averting the destruction of the evidence is grounds for dispensing with the knock and announce rule. See *Richards* v. *Wisconsin*, 520 U. S. 385, 394 (1997). The possibility that a knock and announce would lead to the destruction of evidence cannot be a legitimate ground to distinguish the inevitable discovery rule.

Applying the exclusionary rule to knock and announce cases will lead to the destruction of evidence. Since a violation will lead to the suppression of evidence from an otherwise legal search, officers will be more likely to knock and announce absent the most clearly compelling exigent circumstances. Officers will not be willing to take the risk of suppression in the many situations that they cannot predict the outcome with certainty, even though a failure to knock and announce may be upheld by the courts. This will lead to the destruction of evidence in situations where exigent circumstances would justify dispensing with knock and announce, a classic example of overdeterrence. See *supra*, at 9-10.

The *Nix* Court noted that where an officer knows that discovering the evidence is inevitable, "he will try to avoid engaging in any questionable practice" because "there will be little to gain from taking dubious 'shortcuts' to obtain the evidence." 467 U. S., at 445-446. In this situation, even without the threat of the exclusionary rule, "[s]ignificant disincentives to obtaining evidence illegally—including the possibility of departmental discipline and civil liability—also lessen the likelihood that the ultimate or inevitable discovery exception will promote police misconduct." *Ibid.*

This consideration applies with even greater force to the knock and announce rule. In addition to the alternative incentives mentioned in *Williams*, police have a more substantial incentive to comply with the knock and announce—safety. Along with preserving privacy and property, the knock and announce rule also helps protect the safety of the officers and the occupants of the dwelling being entered. See, *e.g.*, *State* v. *Bamber*, 630 So. 2d 1048, 1052 (Fla. 1994); 2 W. LaFave,

Search and Seizure § 4.8(b), p. 665 (4th ed. 2004). "The unannounced breaking and entering into a home could quite easily lead an individual to believe that his safety was in peril and cause him to take defensive measure which he otherwise would not have taken had he not known that a warrant had been issued to search his home." *State* v. *Carufel*, 112 R. I. 664, 668-669, 314 A. 2d 144, 147 (1974). This risk of an armed encounter with a frightened civilian is more incentive to comply with the knock and announce rule than the exclusionary rule could ever provide.

Applying the exclusionary rule to knock and announce violations has significantly higher costs than those normally associated with the rule. It will suppress evidence that would have been discovered absent the violation, and will lead to the destruction of evidence by suspects. The benefits of the rule are also much smaller than normal, as officers already have substantial incentives to knock and announce absent exigent circumstances. Since the balance of interests supporting the exclusionary rule are tenuous at best in normal circumstances, there is no justification for imposing this drastic remedy on the knock and announce rule.

CONCLUSION

The decision of the Michigan Court of Appeals should be affirmed.

October, 2005

Respectfully submitted,

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HUDSON *v.* MICHIGAN

CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

No. 04–1360. Argued January 9, 2006—Reargued May 18, 2006—Decided June 15, 2006

Detroit police executing a search warrant for narcotics and weapons entered petitioner Hudson's home in violation of the Fourth Amendment's "knock-and-announce" rule. The trial court granted Hudson's motion to suppress the evidence seized, but the Michigan Court of Appeals reversed on interlocutory appeal. Hudson was convicted of drug possession. Affirming, the State Court of Appeals rejected Hudson's renewed Fourth Amendment claim.

Held: The judgment is affirmed.

Affirmed.

JUSTICE SCALIA delivered the opinion of the Court with respect to Parts I, II, and III, concluding that violation of the "knock-and-announce" rule does not require suppression of evidence found in a search. Pp. 2–13.

(a) Because Michigan has conceded that the entry here was a knock-and-announce violation, the only issue is whether the exclusionary rule is appropriate for such a violation. Pp. 2–3.

(b) This Court has rejected "[i]ndiscriminate application" of the exclusionary rule, *United States* v. *Leon*, 468 U. S. 897, 908, holding it applicable only "where its deterrence benefits outweigh its 'substantial social costs.'" *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 363. Exclusion may not be premised on the mere fact that a constitutional violation was a "but-for" cause of obtaining the evidence. The illegal entry here was not the but-for cause, but even if it were, but-for causation can be too attenuated to justify exclusion. Attenuation can occur not only when the causal connection is remote, but also when suppression would not serve the interest protected by the constitutional guarantee violated. The interests protected by the knock-and-announce rule include human life and limb (because an

unannounced entry may provoke violence from a surprised resident), property (because citizens presumably would open the door upon an announcement, whereas a forcible entry may destroy it), and privacy and dignity of the sort that can be offended by a sudden entrance. But the rule has never protected one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests violated here have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable. Pp. 3–7.

(c) The social costs to be weighed against deterrence are considerable here. In addition to the grave adverse consequence that excluding relevant incriminating evidence always entails—the risk of releasing dangerous criminals—imposing such a massive remedy would generate a constant flood of alleged failures to observe the rule, and claims that any asserted justification for a no-knock entry had inadequate support. Another consequence would be police officers' refraining from timely entry after knocking and announcing, producing preventable violence against the officers in some cases, and the destruction of evidence in others. Next to these social costs are the deterrence benefits. The value of deterrence depends on the strength of the incentive to commit the forbidden act. That incentive is minimal here, where ignoring knock-and-announce can realistically be expected to achieve nothing but the prevention of evidence destruction and avoidance of life-threatening resistance, dangers which suspend the requirement when there is "reasonable suspicion" that they exist, *Richards* v. *Wisconsin*, 520 U. S. 385, 394. Massive deterrence is hardly necessary. Contrary to Hudson's argument that without suppression there will be no deterrence, many forms of police misconduct are deterred by civil-rights suits, and by the consequences of increasing professionalism of police forces, including a new emphasis on internal police discipline. Pp. 8–13.

JUSTICE SCALIA, joined by THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO, concluded in Part IV that *Segura* v. *United States*, 468 U. S. 796, *New York* v. *Harris*, 495 U. S. 14, and *United States* v. *Ramirez*, 523 U. S. 65, confirm the conclusion that suppression is unwarranted in this case. Pp. 13–16.

SCALIA, J., delivered the opinion of the Court with respect to Parts I, II, and III, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined, and an opinion with respect to Part IV, in which ROBERTS, C. J., and THOMAS and ALITO, JJ., joined. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 04–1360

BOOKER T. HUDSON, JR., PETITIONER *v.* MICHIGAN

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

[June 15, 2006]

JUSTICE SCALIA delivered the opinion of the Court, except as to Part IV.

We decide whether violation of the "knock-and-announce" rule requires the suppression of all evidence found in the search.

I

Police obtained a warrant authorizing a search for drugs and firearms at the home of petitioner Booker Hudson. They discovered both. Large quantities of drugs were found, including cocaine rocks in Hudson's pocket. A loaded gun was lodged between the cushion and armrest of the chair in which he was sitting. Hudson was charged under Michigan law with unlawful drug and firearm possession.

This case is before us only because of the method of entry into the house. When the police arrived to execute the warrant, they announced their presence, but waited only a short time—perhaps "three to five seconds," App. 15—before turning the knob of the unlocked front door and entering Hudson's home. Hudson moved to suppress all the inculpatory evidence, arguing that the premature entry violated his Fourth Amendment rights.

The Michigan trial court granted his motion. On interlocutory review, the Michigan Court of Appeals reversed, relying on Michigan Supreme Court cases holding that suppression is inappropriate when entry is made pursuant to warrant but without proper "'knock and announce.'" App. to Pet. for Cert. 4 (citing *People* v. *Vasquez*, 461 Mich. 235, 602 N. W. 2d 376 (1999) *(per curiam)*; *People* v. *Stevens*, 460 Mich. 626, 597 N. W. 2d 53 (1999)). The Michigan Supreme Court denied leave to appeal. 465 Mich. 932, 639 N. E. 2d 255 (2001). Hudson was convicted of drug possession. He renewed his Fourth Amendment claim on appeal, but the Court of Appeals rejected it and affirmed the conviction. App. to Pet. for Cert. 1–2. The Michigan Supreme Court again declined review. 472 Mich. 862, 692 N. W. 2d 385 (2005). We granted certiorari. 545 U. S. ___ (2005).

II

The common-law principle that law enforcement officers must announce their presence and provide residents an opportunity to open the door is an ancient one. See *Wilson* v. *Arkansas*, 514 U. S. 927, 931–932 (1995). Since 1917, when Congress passed the Espionage Act, this traditional protection has been part of federal statutory law, see 40 Stat. 229, and is currently codified at 18 U. S. C. §3109. We applied that statute in *Miller* v. *United States*, 357 U. S. 301 (1958), and again in *Sabbath* v. *United States*, 391 U. S. 585 (1968). Finally, in *Wilson*, we were asked whether the rule was also a command of the Fourth Amendment. Tracing its origins in our English legal heritage, 514 U. S., at 931–936, we concluded that it was.

We recognized that the new constitutional rule we had announced is not easily applied. *Wilson* and cases following it have noted the many situations in which it is not necessary to knock and announce. It is not necessary when "circumstances presen[t] a threat of physical vio-

lence," or if there is "reason to believe that evidence would likely be destroyed if advance notice were given," *id.*, at 936, or if knocking and announcing would be "futile," *Richards* v. *Wisconsin*, 520 U. S. 385, 394 (1997). We require only that police "have a reasonable suspicion . . . under the particular circumstances" that one of these grounds for failing to knock and announce exists, and we have acknowledged that "[t]his showing is not high." *Ibid.*

When the knock-and-announce rule does apply, it is not easy to determine precisely what officers must do. How many seconds' wait are too few? Our "reasonable wait time" standard, see *United States* v. *Banks*, 540 U. S. 31, 41 (2003), is necessarily vague. *Banks* (a drug case, like this one) held that the proper measure was not how long it would take the resident to reach the door, but how long it would take to dispose of the suspected drugs—but that such a time (15 to 20 seconds in that case) would necessarily be extended when, for instance, the suspected contraband was not easily concealed. *Id.*, at 40–41. If our *ex post* evaluation is subject to such calculations, it is unsurprising that, *ex ante*, police officers about to encounter someone who may try to harm them will be uncertain how long to wait.

Happily, these issues do not confront us here. From the trial level onward, Michigan has conceded that the entry was a knock-and-announce violation. The issue here is remedy. *Wilson* specifically declined to decide whether the exclusionary rule is appropriate for violation of the knock-and-announce requirement. 514 U. S., at 937, n. 4. That question is squarely before us now.

III

A

In *Weeks* v. *United States*, 232 U. S. 383 (1914), we adopted the federal exclusionary rule for evidence that was unlawfully seized from a home without a warrant in violation of the Fourth Amendment. We began applying the

same rule to the States, through the Fourteenth Amendment, in *Mapp* v. *Ohio*, 367 U. S. 643 (1961).

Suppression of evidence, however, has always been our last resort, not our first impulse. The exclusionary rule generates "substantial social costs," *United States* v. *Leon*, 468 U. S. 897, 907 (1984), which sometimes include setting the guilty free and the dangerous at large. We have therefore been "cautio[us] against expanding" it, *Colorado* v. *Connelly*, 479 U. S. 157, 166 (1986), and "have repeatedly emphasized that the rule's 'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application," *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 364–365 (1998) (citation omitted). We have rejected "[i]ndiscriminate application" of the rule, *Leon*, *supra*, at 908, and have held it to be applicable only "where its remedial objectives are thought most efficaciously served," *United States* v. *Calandra*, 414 U. S. 338, 348 (1974)—that is, "where its deterrence benefits outweigh its 'substantial social costs,'" *Scott*, *supra*, at 363 (quoting *Leon*, *supra*, at 907).

We did not always speak so guardedly. Expansive dicta in *Mapp*, for example, suggested wide scope for the exclusionary rule. See, *e.g.*, 367 U. S., at 655 ("[A]ll evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court"). *Whiteley* v. *Warden, Wyo. State Penitentiary*, 401 U. S. 560, 568–569 (1971), was to the same effect. But we have long since rejected that approach. As explained in *Arizona* v. *Evans*, 514 U. S. 1, 13 (1995): "In *Whiteley*, the Court treated identification of a Fourth Amendment violation as synonymous with application of the exclusionary rule to evidence secured incident to that violation. Subsequent case law has rejected this reflexive application of the exclusionary rule." (Citation omitted.) We had said as much in *Leon*, a decade earlier, when we explained that "[w]hether the exclusionary sanction is appropriately

imposed in a particular case, . . . is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.'" 468 U. S., at 906 (quoting *Illinois* v. *Gates*, 462 U. S. 213, 223 (1983)).

In other words, exclusion may not be premised on the mere fact that a constitutional violation was a "but-for" cause of obtaining evidence. Our cases show that but-for causality is only a necessary, not a sufficient, condition for suppression. In this case, of course, the constitutional violation of an illegal *manner* of entry was *not* a but-for cause of obtaining the evidence. Whether that preliminary misstep had occurred *or not*, the police would have executed the warrant they had obtained, and would have discovered the gun and drugs inside the house. But even if the illegal entry here could be characterized as a but-for cause of discovering what was inside, we have "never held that evidence is 'fruit of the poisonous tree' simply because 'it would not have come to light but for the illegal actions of the police.'" *Segura* v. *United States*, 468 U. S. 796, 815 (1984). See also *id.*, at 829 (STEVENS, J., dissenting) ("We have not . . . mechanically applied the [exclusionary] rule to every item of evidence that has a causal connection with police misconduct"). Rather, but-for cause, or "causation in the logical sense alone," *United States* v. *Ceccolini*, 435 U. S. 268, 274 (1978), can be too attenuated to justify exclusion, *id.*, at 274–275. Even in the early days of the exclusionary rule, we declined to

> "hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light *but for* the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means suf-

> ficiently distinguishable to be purged of the primary taint.'" *Wong Sun* v. *United States*, 371 U. S. 471, 487–488 (1963) (quoting J. Maguire, Evidence of Guilt 221 (1959) (emphasis added)).

Attenuation can occur, of course, when the causal connection is remote. See, *e.g.*, *Nardone* v. *United States*, 308 U. S. 338, 341 (1939). Attenuation also occurs when, even given a direct causal connection, the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained. "The penalties visited upon the Government, and in turn upon the public, because its officers have violated the law must bear some relation to the purposes which the law is to serve." *Ceccolini*, *supra*, at 279. Thus, in *New York* v. *Harris*, 495 U. S. 14 (1990), where an illegal warrantless arrest was made in Harris' house, we held that

> "suppressing [Harris'] statement taken outside the house would not serve the purpose of the rule that made Harris' in-house arrest illegal. The warrant requirement for an arrest in the home is imposed to protect the home, and anything incriminating the police gathered from arresting Harris in his home, rather than elsewhere, has been excluded, as it should have been; the purpose of the rule has thereby been vindicated." *Id.*, at 20.

For this reason, cases excluding the fruits of unlawful warrantless searches, see, *e.g.*, *Boyd* v. *United States*, 116 U. S. 616 (1886); *Weeks*, 232 U. S. 383; *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920); *Mapp*, *supra*, say nothing about the appropriateness of exclusion to vindicate the interests protected by the knock-and-announce requirement. Until a valid warrant has issued, citizens are entitled to shield "their persons, houses, papers, and effects," U. S. Const., Amdt. 4, from the government's scrutiny. Exclusion of the evidence obtained by a war-

rantless search vindicates that entitlement. The interests protected by the knock-and-announce requirement are quite different—and do not include the shielding of potential evidence from the government's eyes.

One of those interests is the protection of human life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident. See, *e.g.*, *McDonald* v. *United States*, 335 U. S. 451, 460–461 (1948) (Jackson, J., concurring). See also *Sabbath*, 391 U. S., at 589; *Miller*, 357 U. S., at 313, n. 12. Another interest is the protection of property. Breaking a house (as the old cases typically put it) absent an announcement would penalize someone who "'did not know of the process, of which, if he had notice, it is to be presumed that he would obey it . . . .'" *Wilson*, 514 U. S., at 931–932 (quoting *Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195–196 (K. B. 1603)). The knock-and-announce rule gives individuals "the opportunity to comply with the law and to avoid the destruction of property occasioned by a forcible entry." *Richards*, 520 U. S., at 393, n. 5. See also *Banks*, 540 U. S., at 41. And thirdly, the knock-and-announce rule protects those elements of privacy and dignity that can be destroyed by a sudden entrance. It gives residents the "opportunity to prepare themselves for" the entry of the police. *Richards*, 520 U. S., at 393, n. 5. "The brief interlude between announcement and entry with a warrant may be the opportunity that an individual has to pull on clothes or get out of bed." *Ibid.* In other words, it assures the opportunity to collect oneself before answering the door.

What the knock-and-announce rule has never protected, however, is one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests that *were* violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable.

B

Quite apart from the requirement of unattenuated causation, the exclusionary rule has never been applied except "where its deterrence benefits outweigh its 'substantial social costs,'" *Scott*, 524 U. S., at 363 (quoting *Leon*, 468 U. S., at 907). The costs here are considerable. In addition to the grave adverse consequence that exclusion of relevant incriminating evidence always entails (viz., the risk of releasing dangerous criminals into society), imposing that massive remedy for a knock-and-announce violation would generate a constant flood of alleged failures to observe the rule, and claims that any asserted *Richards* justification for a no-knock entry, see 520 U. S., at 394, had inadequate support. Cf. *United States* v. *Singleton*, 441 F. 3d 290, 293–294 (CA4 2006). The cost of entering this lottery would be small, but the jackpot enormous: suppression of all evidence, amounting in many cases to a get-out-of-jail-free card. Courts would experience as never before the reality that "[t]he exclusionary rule frequently requires extensive litigation to determine whether particular evidence must be excluded." *Scott*, *supra*, at 366. Unlike the warrant or *Miranda* requirements, compliance with which is readily determined (either there was or was not a warrant; either the *Miranda* warning was given, or it was not), what constituted a "reasonable wait time" in a particular case, *Banks*, *supra*, at 41 (or, for that matter, how many seconds the police in fact waited), or whether there was "reasonable suspicion" of the sort that would invoke the *Richards* exceptions, is difficult for the trial court to determine and even more difficult for an appellate court to review.

Another consequence of the incongruent remedy Hudson proposes would be police officers' refraining from timely entry after knocking and announcing. As we have observed, see *supra*, at 3, the amount of time they must wait is necessarily uncertain. If the consequences of running

afoul of the rule were so massive, officers would be inclined to wait longer than the law requires—producing preventable violence against officers in some cases, and the destruction of evidence in many others. See *Gates*, 462 U. S., at 258. We deemed these consequences severe enough to produce our unanimous agreement that a mere "reasonable suspicion" that knocking and announcing "under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime," will cause the requirement to yield. *Richards*, *supra*, at 394.

Next to these "substantial social costs" we must consider the deterrence benefits, existence of which is a necessary condition for exclusion. (It is not, of course, a sufficient condition: "[I]t does not follow that the Fourth Amendment requires adoption of every proposal that might deter police misconduct." *Calandra*, 414 U. S., at 350; see also *Leon*, *supra*, at 910.) To begin with, the value of deterrence depends upon the strength of the incentive to commit the forbidden act. Viewed from this perspective, deterrence of knock-and-announce violations is not worth a lot. Violation of the warrant requirement sometimes produces incriminating evidence that could not otherwise be obtained. But ignoring knock-and-announce can realistically be expected to achieve absolutely nothing except the prevention of destruction of evidence and the avoidance of life-threatening resistance by occupants of the premises—dangers which, if there is even "reasonable suspicion" of their existence, *suspend the knock-and-announce requirement anyway*. Massive deterrence is hardly required.

It seems to us not even true, as Hudson contends, that without suppression there will be no deterrence of knock-and-announce violations at all. Of course even if this assertion were accurate, it would not necessarily justify suppression. Assuming (as the assertion must) that civil

suit is not an effective deterrent, one can think of many forms of police misconduct that are similarly "undeterred." When, for example, a confessed suspect in the killing of a police officer, arrested (along with incriminating evidence) in a lawful warranted search, is subjected to physical abuse at the station house, would it seriously be suggested that the evidence must be excluded, since that is the only "effective deterrent"? And what, other than civil suit, is the "effective deterrent" of police violation of an already-confessed suspect's Sixth Amendment rights by denying him prompt access to counsel? Many would regard these violated rights as more significant than the right not to be intruded upon in one's nightclothes—and yet nothing but "ineffective" civil suit is available as a deterrent. And the police incentive for those violations is arguably greater than the incentive for disregarding the knock-and-announce rule.

We cannot assume that exclusion in this context is necessary deterrence simply because we found that it was necessary deterrence in different contexts and long ago. That would be forcing the public today to pay for the sins and inadequacies of a legal regime that existed almost half a century ago. Dollree Mapp could not turn to 42 U. S. C. §1983 for meaningful relief; *Monroe* v. *Pape*, 365 U. S. 167 (1961), which began the slow but steady expansion of that remedy, was decided the same Term as *Mapp*. It would be another 17 years before the §1983 remedy was extended to reach the deep pocket of municipalities, *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658 (1978). Citizens whose Fourth Amendment rights were violated by federal officers could not bring suit until 10 years after *Mapp*, with this Court's decision in *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971).

Hudson complains that "it would be very hard to find a lawyer to take a case such as this," Tr. of Oral Arg. 7, but 42 U. S. C. §1988(b) answers this objection. Since some